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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

13 IN RE WACHOVIA CORP. "PICK-A-
14 PAYMENT" MORTGAGE MARKETING AND
15 SALES PRACTICES LITIGATION

MDL DOCKET NO. 2015 JF (RS)

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**ORDER¹ RE MOTIONS FOR
APPOINTMENT OF LEAD
COUNSEL AND TO SHORTEN
TIME**

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This multidistrict litigation, which concerns the legality of numerous home mortgages entered into primarily by World Savings, Inc., currently comprises at least four and likely several more class actions. The first of these actions, *Mandrigues v. World Savings, Inc.*, was filed in this Court on August 30, 2007. On November 7, 2008, the first of a series of actions containing nearly identical federal claims pursuant to the Truth in Lending Act ("TILA") was filed in South Carolina by an unrelated set of attorneys ("the South Carolina Attorneys"). The South Carolina Attorneys filed similar actions in Florida and Maryland on August 25, 2008 and September 4, 2008, respectively. On November 7, 2008, Plaintiffs in the *Mandrigues* action

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¹ This disposition is not designated for publication in the official reports.

1 filed motions for class certification and for a preliminary injunction. Ten days later, on the basis
2 of *Mandrigues* and their three later-filed actions, the South Carolina Attorneys filed a motion for
3 consolidation before the Joint Panel on Multidistrict Litigation (“JPML”), requesting that all of
4 the actions, including *Mandrigues*, be transferred to a South Carolina court near their offices.
5 On February 13, 2009, the JPML ordered that the actions be consolidated and centralized in this
6 district rather than in South Carolina. Nonetheless, after the JPML issued its transfer order, the
7 South Carolina Attorneys continued to file similar TILA-bases class action lawsuits in other
8 states. Counsel in *Mandrigues* forwarded notice of these actions to the JPML for potential tag-
9 along treatment.

10 The law firm of Arbogast and Berns, which serves as counsel for the *Mandrigues*
11 plaintiffs, has requested that the Court appoint it MDL “lead counsel,” and that this request be
12 considered on an expedited basis. Federal Rule of Civil Procedure 23(g)(2)(A) authorizes the
13 Court to designate class counsel to act on behalf of the putative class before determining
14 whether to certify a class. *See* Fed. R. Civ. P. 23(g) Advisory Committee Notes (2003); *see also*
15 *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D. 552, 554-55 (S.D. Ohio 2005); *In re*
16 *Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005). With respect to the timing of such
17 a designation, the Court is aware of a significant mediation in this matter scheduled for May 27,
18 2009, and of a foundational meeting to precede the mediation on March 31, 2009. The Court
19 agrees that the leadership issues addressed in the motion for appointment of lead counsel and
20 responding papers should be resolved at the earliest possible time.

21 With respect to their representative capabilities, the *Mandrigues* counsel have provided
22 the Court with ample documentation of their experience in this type of consumer class action
23 litigation. Having reviewed this documentation, the Court is satisfied that Arbogast and Berns
24 would represent the putative class members fairly and adequately. *See* Fed. R. Civ. P.
25 23(g)(1)(B). With respect to whether the *Mandrigues* counsel should be appointed as “lead”
26 counsel—to the exclusion of the South Carolina Attorneys—the Court has viewed the Bronson
27 Declaration filed in support of the *Mandrigues* counsel’s reply memorandum and is not
28 insensible to the *Mandrigues* counsel’s frustration. Notwithstanding that fifty-seven percent of

1 the subject Wachovia mortgages were secured by property located in California, the South
2 Carolina Attorneys filed a series of actions “borrowing” the central TILA claims from
3 *Mandrigues* and then moved to consolidate all of these actions, including *Mandrigues*, in South
4 Carolina, where only a small fraction of the total borrowers reside. The South Carolina
5 Attorneys point to the filing in *Mandrigues* of a motion seeking to certify a national class as
6 grounds for their consolidation efforts, noting that their South Carolina action also requested
7 certification of a national class. But the South Carolina Attorneys have not explained how
8 certification of a class in this Court would have impaired the rights of the putative *members* of a
9 national class. In short, the South Carolina Attorneys’ consolidation efforts appear to have been
10 a tactical move that was rebuffed by the JPML.

11 Nonetheless, the Court must place the interests of the putative class members above
12 those of counsel. While the Court does find that a leadership structure will be essential, it does
13 not believe that exclusion of the South Carolina Attorneys, who also offer very considerable
14 class-action litigation experience, would benefit the putative class. Accordingly, and consistent
15 with this Court’s past multidistrict practice, the Court will direct counsel to form a committee,
16 in this case chaired by a representative selected by the *Mandrigues* counsel. The *Mandrigues*
17 counsel also will serve as Liaison Counsel, as that role typically is defined. Within this
18 framework, the Court directs counsel for all parties to reach an appropriate agreement—as it
19 appears they nearly did in the past. *See* South Carolina Opposition, at 12:10-18.

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21 **IT IS SO ORDERED**

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23 DATED: 3/26/09

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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